

**立法會**  
**Legislative Council**

LC Paper No. CP 937/12-13  
(These minutes have been  
seen by The Ombudsman)

Ref : CP/G06/4 XVII

**Minutes of meeting between Legislative Council Members  
and Mr Alan LAI Nin, GBS, JP, The Ombudsman,  
on Tuesday, 18 December 2012, at 11:00 am  
in Conference Room 1 of the Legislative Council Complex**

**Members present** : Hon Andrew LEUNG Kwan-yuen, GBS, JP (Chairman)  
Hon WONG Kwok-hing, BBS, MH  
Hon Ronny TONG Ka-wah, SC  
Hon Cyd HO Sau-lan  
Hon Paul TSE Wai-chun, JP  
Hon Alan LEONG Kah-kit, SC  
Hon Claudia MO Man-ching  
Hon NG Leung-sing, SBS, JP  
Hon WU Chi-wai, MH  
Hon MA Fung-kuok, SBS, JP  
Hon Charles Peter MOK  
Hon Raymond CHAN Chi-chuen  
Hon CHAN Han-pan  
Hon KWOK Wai-keung  
Hon Christopher CHEUNG Wah-fung, JP  
Dr Hon Fernando CHEUNG Chiu-hung  
Ir Dr Hon LO Wai-kuok, BBS, MH, JP  
Hon Tony TSE Wai-chuen

**Attendance by invitation** : Office of The Ombudsman  
  
Mr Alan LAI Nin, GBS, JP  
The Ombudsman

Mr Tony MA Kai-loong  
Assistant Ombudsman

**Staff in attendance :** Ms Erin TSANG  
Acting Principal Council Secretary (Complaints)

Ms Wendy JAN  
Acting Senior Council Secretary (Complaints) 4

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The Chairman welcomed Mr Alan LAI, The Ombudsman, and Mr Tony MA, Assistant Ombudsman, to the meeting. He said that the purposes of the meeting were for The Ombudsman to brief Members on the work of the Office of The Ombudsman (the Office), and to exchange views on issues of mutual concern. The Chairman reminded Members that the meeting was not covered by the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) and that individual cases would not be discussed.

#### **I. The work of the Office of The Ombudsman in the previous year** (LC Paper No. CP 224/12-13)

##### Briefing by The Ombudsman

2. The Ombudsman briefed Members on the work of the Office in the previous year. He highlighted that the number of enquiries and complaint cases received by the Office had remained steady in the past few years. On average, the Office received about 1 000 enquiries and about 400 complaint cases each month. While most of the cases could be concluded within three months, a small percentage of cases were concluded within six months, and the rest took more than six months to conclude.

3. The Ombudsman advised that most

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complainants lodged their complaints in writing, and e-mail remained the most popular channel. In view of such trend, the Office had adopted a new measure to handle complaints lodged through e-mail. Before the introduction of that measure, the Office had communicated with all complainants by post, since the privacy of complainants might not be sufficiently protected by ordinary e-mail and the Office had to confirm the identity of the complainants by means of their residential address. However, the Office had, as from last year, started to communicate with complainants by encrypted e-mail. With a password received from the Office by post, the complainant could use it to open e-mails issued by the Office.

4. The Ombudsman informed the meeting that during the period from April to November 2012, the Office had completed three direct investigations and concluded 31 direct investigation assessments.

## Discussion

### *Direct investigations*

5. Mr CHAN Han-pan commended The Ombudsman for handling complaint cases in an impartial manner; not only had The Ombudsman earned the trust from the public, most of his recommendations made in respect of complaint cases were also well accepted by Government departments. Mr CHAN then expressed concern on the serious problem of illegal parking of bicycles on outlying islands (e.g. Lamma Island and Cheung Chau). He was of the view that the Administration had not tried its best to implement feasible measures to rectify the problem.

6. The Ombudsman pointed out that as illegal parking of bicycles is a district management issue, District Councils and District Offices should formulate measures to address the problem. As for the Office, he said that upon receipt of complaints on illegal parking of bicycles in a specific district, his staff would examine the cases from the perspective of maladministration and would comment on the way the

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concerned departments should handle the cases if no actions had been so taken by the latter.

7. Regarding the direct investigation initiated by The Ombudsman in February 2012 to probe into the regulatory measures and enforcement actions against unauthorized extension of business area of restaurants, Mr CHAN Han-pan remarked that to his understanding, removal of obstructing objects fell within the purview of the Police. As such, he wished that The Ombudsman would take up the issue with the Police. Moreover, as many restaurants engaged in the hot-pot business would place their cooking appliances in the unauthorized area to which they had extended their business, he requested The Ombudsman to follow up on such irregularity with the Electrical and Mechanical Services Department (EMSD) as well.

8. In response, The Ombudsman advised that pursuant to The Ombudsman Ordinance (Cap. 397), The Ombudsman could not investigate complaints against the Hong Kong Police Force other than those related to the Code on Access to Information. Hence, the above direct investigation would not cover the Police. As for Mr CHAN's suggestion of following up the issue with EMSD, The Ombudsman took note of it for consideration.

9. Dr Fernando CHEUNG also commended the Office for its work done in the past years. He pointed out that the work of the Office had provided checks and balances against maladministration of Government departments. In this connection, he noted that the Office had conducted a direct investigation into the Social Welfare Department (SWD)'s grant of disability allowance and processing of appeals. The investigation report had already been published in 2009. In response to the recommendations made by the Office, the Administration had undertaken to conduct a review on the Disability Allowance Scheme. However, Dr CHEUNG was concerned that the Administration had not yet announced the outcome of the review. Since The Ombudsman could submit the report and the recommendations therein to the Chief Executive (CE)

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if he was of the view that the report submitted to the head of the organization concerned was not followed up adequately, Dr CHEUNG enquired whether The Ombudsman would consider submitting the report to the CE in this respect.

10. The Ombudsman explained that under The Ombudsman Ordinance, the major duty of The Ombudsman was to make recommendations for improvement to the departments concerned in the light of the result of his investigation. Most of the recommendations made in relation to direct investigations by the Office in the past had been accepted by the concerned departments. However, the schedule for implementing improvement measures in response to the Office's recommendations as undertaken by the departments could be affected by a number of factors, such as resource constraints, the need for legislative amendments or inter-departmental collaboration, etc. Generally speaking, he would only submit a report to the CE if the departments concerned did not accept his recommendations. Having said that, he remarked that since the annual report he submitted to the CE would also be tabled in the Legislative Council, Members could follow up the matter further with the Administration from a policy angle at relevant panel meetings.

11. The Ombudsman also advised that in response to the recommendations made in The Ombudsman's direct investigation report issued in 2009-2010, a series of new measures on regulation of lift safety had been introduced by EMSD recently.

12. In this connection, Dr Fernando CHEUNG suggested that consideration could be given to making available on the Office's website information relating to the progress of follow-up actions taken by respective departments in response to the recommendations made in The Ombudsman's direct investigation reports, so that the public could be apprised of the latest situation of the follow-up actions so taken. The Ombudsman thanked Dr CHEUNG for his suggestion.

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13. Mr WONG Kwok-hing commended as well The Ombudsman for conducting the aforesaid direct investigation into SWD and for making eight recommendations in the investigation report. However, he noted with concern that while SWD appeared to have accepted The Ombudsman's recommendations, no follow-up actions had in fact been taken. As such, he enquired whether further investigation would be made by The Ombudsman in this respect.

14. The Ombudsman stressed that the Office's role was primarily that of a commentator. Since the recommendations made by The Ombudsman in investigation report had no binding effect, Government departments were not obliged to follow the recommendations, and they might instead choose to adopt other measures to effectively address the issues.

15. Ms Claudia MO also praised the Office for its work done in the past years, which had gained public recognition. In this connection, she enquired whether The Ombudsman would consider criticizing or reprimanding the concerned departments openly if the departments had not adequately acted upon his recommendations.

16. The Ombudsman responded that as mentioned in paragraph 10 above, most of the recommendations made by the Office in the past in relation to its direct investigations had been accepted by the concerned Government departments. If the departments failed to take appropriate follow-up actions in response to those recommendations, consideration might be given to conducting another direct investigation, and the direct investigation into enforcement against unauthorized building works in New Territories Exempted Houses was an example.

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*Re-opening and review of cases*

17. Ms Claudia MO referred to paragraph 4.20 of the 2012 Annual Report of the Office which stated that "during the year the Office received 248 requests for re-assessment, with 95 subsequently re-opened for inquiry". She expressed concern on the high percentage of cases which were re-opened for inquiry after re-assessment by the Office.

18. In response, The Ombudsman explained that as some complainants had failed to provide sufficient information when they first lodged their complaints with the Office or submit the necessary documents in time, the Office was unable to investigate those complaints. Nevertheless, upon receipt of all necessary documents from complainants, the Office would re-assess those cases with a view to re-opening them.

19. In response to Ms Claudia MO's further enquiry, The Ombudsman advised that in 2012, the Office received 61 requests for review, 22 of which were declined and 39 reviews were conducted. While the Office changed its decisions in four cases after review, the original decision for the remaining 35 cases were upheld. The Ombudsman also advised that three of the cases were reviewed by way of full investigation, with the Office's decision varied in two.

*Use of mediation to resolve complaint cases*

20. Dr LO Wai-kwok noted from the 2012 Annual Report of the Office that The Ombudsman encouraged his staff to deal with complaint cases by way of mediation, and the number of cases which were successfully concluded by way of mediation had been on the rise in the past years. While mediation could achieve a win-win situation, Dr LO was concerned that the workload of the Office might increase as a result of the public's expectation of the Office as an expedient venue for resolving their problems through mediation.

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21. The Ombudsman pointed out that The Ombudsman Ordinance empowered the Office to handle cases by way of mediation which could help the parties concerned to achieve a win-win situation on cases involving minor or no maladministration. He also illustrated with examples how the Office had helped resolving the differences between the public and Government departments by mediation.

22. As regards the workload of the Office, The Ombudsman remarked that the amount of cases being handled by the Office had not yet been casting negative impact on its existing resources. Nevertheless, he would closely monitor the situation, and would note Dr LO's concern for follow-up where necessary.

*Complaints involving multiple departments*

23. Mr WU Chi-wai shared the remarks made by The Ombudsman in the 2012 Annual Report of the Office that a compartmental mentality remained prevalent in some Government departments. He then asked The Ombudsman for his views on the handling of complaints which involved multiple departments.

24. The Ombudsman responded that in complaint cases involving a number of different departments, especially on issues relating to district management, such as street obstruction, land administration, building safety and unauthorized structures, etc., the concerned departments tended to wait for other departments to take action. However, the Office maintained that co-ordination should be made among the concerned departments for drawing up action plan for expeditious resolution of complaints. He also advised that as far as he understood, other countries had similar problems as well.

*Handling complaint cases relating to district management*

25. Mr WU Chi-wai asked The Ombudsman how he would strike a balance among the principles of



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"legality, reasonableness and compassion" when handling complaint cases involving district management, and how recommendations were made to Government departments in line with the above principles. The Ombudsman remarked that District Councils and District Offices had a pivotal role to play in handling matters relating to district management, and their decisions should be made with reference to the views of the local community, as well as taking into account the principle of "legality, reasonableness and compassion"

*Powers and functions of The Ombudsman in monitoring the Administration*

26. Ms Cyd HO said that in the light of the remark made by the Chief Secretary for Administration earlier regarding her concerns that regulatory bodies such as the Office and the Independent Commission Against Corruption might become a major hurdle to governance, she would like to know whether The Ombudsman, when following up on complaint cases with Government departments within his jurisdiction, had come across any situation in which the departments concerned viewed The Ombudsman as a hurdle.

27. The Ombudsman responded that since The Ombudsman Ordinance empowered him to conduct investigation into complaints against departments for alleged maladministration, he did not have the slightest worry that the Office would be regarded as a hurdle when exercising the power conferred upon by The Ombudsman Ordinance, nor had he been subjected to any pressure so far. He stressed that the Office is an independent statutory body and his staff had the determination to carry out their duties in a proper manner.

*Positive complaint culture*

28. In response to Ms Cyd HO's enquiry on "positive complaint culture" which was mentioned in the 2012 Annual Report, The Ombudsman explained that his intention was to promote a culture where

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complainants would lodge complaints in a reasonable and open manner and accept investigation results which might be contrary to their views.

29. Ms Cyd HO further enquired as to how The Ombudsman would deal with unreasonably persistent complainants. The Ombudsman remarked that he was also very concerned about how his staff dealt with such kind of complainants. To better equip their staff the knowledge to deal with those complainants, the Office had invited local and overseas experts to provide training to them. "Complainants' Charter" and notices were put up at prominent positions in the Office to remind complainants of their responsibilities as well as actions which might be taken by the Office. The Ombudsman stressed that the Office would continue to handle complaint cases lodged by unreasonably persistent complainants in a fair and impartial manner notwithstanding the poor attitude of those complainants and the long time taken for handling their cases.

**II. Any other business**

30. There being no other business, the meeting ended at 12:00 noon.